UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

PHARMACOSMOS A/S,
Petitioner

v.

LUITPOLD PHARMACEUTICALS, INC.,
Patent Owner

Patent No. 7,754,702

Title: METHODS AND COMPOSITIONS FOR ADMINISTRATION OF IRON

Inter Partes Review No. 2015-01490

PETITIONER'S OPPOSITION TO PATENT OWNER'S MOTION TO EXCLUDE

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I. RELIEF REQUESTED

Petitioner Pharmacosmos A/S ("Petitioner") timely provides the following opposition to Patent Owner's Motion to Exclude Evidence (Paper 44; "Motion"), filed on August 9, 2016. Luitpold Pharmaceuticals ("Patent Owner") seeks to exclude not only Petitioner's Exhibits 1055, 1056, 1057, 1059, 1060, 1061 and 1063 and portions of Patent Owner's own expert's deposition testimony, Exhibit 1054, (the "Challenged Exhibits"), but also Petitioner's arguments that cite to these exhibits, even if such citation is incidental to the argument. Neither position is tenable. Contrary to Patent Owner's representations, the Challenged Exhibits are admissible under the Federal Rules of Evidence and the Code of Federal Regulations, and the bulk of Petitioner's related arguments should be permitted regardless of such admissibility. The Motion should be denied in its entirety.

II. APPLICABLE PRINCIPLES

Motions to exclude are limited to "challeng[ing] the admissibility of evidence" under the Federal Rules of Evidence ("FRE") or any Board rules that supersede them, *see* Office Patent Trial Practice Guide, 77 Fed. Reg. 48756, 48767 (Aug. 14, 2012), and as the movant, Patent Owner carries the burden of proof to establish entitlement to having the evidence excluded. *See* 37 C.F.R. § 42.20(c). A motion to exclude evidence also must "explain why the evidence is not admissible (*e.g.*, relevance or hearsay), but may not be used to challenge the sufficiency of the evidence to prove a particular fact." Office Patent Trial Practice

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Guide, 77 Fed. Reg. at 48767.

Moreover, 37 C.F.R. § 42.64(a) requires that an "objection to the admissibility of deposition evidence … be made during the deposition." As such, "[a]n objection at the time of examination … must be noted on the record." Office Patent Trial Practice Guide, 77 Fed. Reg. at 48772; *see also id*. at 48767.

III. ARGUMENT

A. Patent Owner's Attempt To Exclude Dr. Manzi's Testimony (Ex. 1054) Is Untimely And Misleading

Patent Owner seeks to exclude testimony of their own expert, Dr. Manzi, on the issue of the reference, Beshara (Ex. 2041), for alleged "misinterpretation" of that testimony. Patent Owner's request should be denied for at least the following reasons.

First, it is not timely, as Patent Owner failed to raise any objection to such testimony in Patent Owner's Objections to Petitioner's Reply and Opposition Evidence. Objections made during Dr. Manzi's Deposition, cited as the basis for timeliness in the Motion, were not made to any characterization of the testimony, and therefore the Motion raises a new issue.

Second, Patent Owner, in the Motion, misleadingly contends that Petitioner cited Dr. Manzi as confirming that "data in Beshara actually corresponds to data in the working examples and detailed description of the '702 patent.'" Motion at 13. In contrast, Petitioner stated that "Dr. Manzi, Patent Owner's expert, confirmed

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